

Lessors of tangible personal property, including motor vehicles, under true leases in Illinois are deemed end users of the property to be leased. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. See 86 Ill. Adm. Code 130.220 and 86 Ill. Adm. Code 130.2013. (This is a GIL.)

February 28, 2005

Dear Xxxxx:

This letter is in response to your e-mail to Representative Carolyn Krause dated February 2, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I recently lost \$600.00 and a lot of time trying to assume an auto lease from STATE. Briefly, I arranged for the transfer with ABC. They quoted the Illinois' tax rate at 7 percent or \$38 per month for the 14 month balance of the lease.

After paying XYZ a NON-REFUNDABLE \$450.00 application fee and ABC's \$179.00 fee, I received the paperwork. I called the Illinois Department of Revenue Tax Line and spoke to PERSON to find out what paperwork I needed to fill out. He told me that unlike any other state in the union, Illinois figures sales tax based on the 7% of the total market value of the car on a lease instead of the rest of the world that taxes a lease on the value of the lease.

If I lease a \$28,000.00 car for 2 months in Illinois, my tax liability is \$1960.00! To add insult to injury if I buy the car at the end of the 2 month lease I have to pay state sales tax on the \$27,000.00 residual payoff (\$1890.00) just 2 months later! This is fundamentally unfair and unreasonable by anyone's standard. In addition, if I were to trade in the lease car and buy a car, I would not receive any tax credit for the trade in. Unlike the citizen who bought a car 2 months ago and paid the same amount of tax I did. He/she would only pay the tax on the balance of what his trade in is worth.

If a private company obtained this kind of windfall profit for doing nothing, the indictments would be flying at them! How can my state do this to all the people leasing cars out there? I'll tell you how, they know its wrong, but they can't give up the unethical and immoral revenue stream this tax must generate.

I can't believe that auto leasing companies haven't complained about the unfair advantage out of state leasing companies have for competitive bidding. Unlike me, big companies and corporations can take advantage of out of state addresses for billing and registration.

Can anything be done about this tax? Do you think this is fair? If yes, what is your rationale for ripping off lessees?

DEPARTMENT'S RESPONSE:

Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220, enclosed.

As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

A lessee of a motor vehicle in Illinois for a lease term of greater than one year is not subject to tax. While the legal incidence of the tax is imposed only on the lessor, it is common for leasing companies to require reimbursement of their Illinois tax liability from the lessee by contract. A review of a motor vehicle leasing contract in Illinois will likely reflect this reimbursement. If a lessee purchases a motor vehicle that he or she is leasing for a lease term or greater than one year, then the lessor incurs Retailers' Occupation Tax liability on this sale and the lessee incurs Use Tax liability on this sale. Enclosed please find a copy of 86 Ill. Adm. Code 130.2013 which addresses this issue.

If a person leasing a motor vehicle in Illinois for a lease term of greater than one year decides to terminate the lease and instead purchase a motor vehicle, that person is not eligible for trade-in credit for the leased vehicle because the lessee does not own the motor vehicle.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).]

Sincerely,

Samuel J. Moore
Associate Counsel

Enc.

cc: Florene Scott